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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/613,749  | 07/03/2003  | Arthur M. Krieg      | C01037.70041.US     | 6452             |
| 23628   | 7590        | 06/29/2007           | EXAMINER            |                  |
| WOLF GREENFIELD & SACKS, P.C.<br>600 ATLANTIC AVENUE<br>BOSTON, MA 02210-2206 |             |                      | MINNIFIELD, NITA M  |                  |
|   |             | ART UNIT             | PAPER NUMBER        |                  |
|   |             | 1645                 |                     |                  |
|   |             | MAIL DATE            | DELIVERY MODE       |                  |
|   |             | 06/29/2007           | PAPER               |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/613,749             | KRIEG, ARTHUR M.    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | N. M. Minnifield       | 1645                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 March 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 5,13,15,48-52,56,57,65 and 66 is/are withdrawn from consideration.
- 5) Claim(s) 1-4,8-12,14,19-21,23,28-33,44 and 100-105 is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**Continuation of Disposition of Claims:** Claims pending in the application are 1-5,8-15,19-21,23,28-33,44,46-58,64-66,71-74,77-81,84,85,89,90,95,96,98 and 100-105.

**Continuation of Disposition of Claims:** Claims subject to restriction and/or election requirement are 46,47,53-55,58,64,71-74,77-81,84,85,89,90,95,96 and 98.

## **DETAILED ACTION**

1. Applicants' amendment filed March 17, 2007 is acknowledged and has been entered. Claims 6, 7, 16-18, 22, 24-27, 34-43, 45, 59-63, 67-70, 75, 76, 82, 83, 86-88, 91-94, 97 and 99 have been canceled. Claims 1-5, 8-15, 19-21, 23, 28-33, 44, 46-58, 64-66, 71-74, 77-81, 84, 85, 89, 90, 95, 96, 98 and 100-105 are now pending in the present application. Product claims 1-4, 8-12, 14, 19-21, 23, 28-33, 44 and 100-105 are under consideration. All rejections have been withdrawn in view of Applicant's amendments to the claims and/or comments set forth in the amendment.
2. Claims 1-4, 8-12, 14, 19-21, 23, 28-33, 44 and 100-105 are allowed.
3. Claims 1-4, 8-12, 14, 19-21, 23, 28-33, 44 and 100-105 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 46, 47, 53-55, 58, 64, 71-74, 77-81, 84, 85, 89, 90, 95, 96, and 98, directed to the process of using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104. Claims 48-52, 56, 57, 65 and 66 are, directed to the invention(s) of methods that do not require all the limitations of an allowable product claim, and have NOT been rejoined.
4. Claims 5, 13, 15, 48-52, 56, 57, 65 and 66 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species,

there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 27, 2004.

***Election/Restrictions***

5. This application contains claims directed to the following patentably distinct species: various types of cancers recited in claim 95. Applicant should elect one specific cancer for examination. The species are independent or distinct because various types of cancers are structurally and functionally independent and distinct.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, cancer is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is 571-272-0860. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



N. M. Minnfield

Primary Examiner

Art Unit 1645

NMM

June 22, 2007